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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,050	10/12/2001	David Ellis	S85.12-0001	1800
27367 7590 12/21/2007 WESTMAN CHAMPLIN & KELLY, P.A. SUITE 1400 900 SECOND AVENUE SOUTH MINNEAPOLIS, MN 55402-3319			EXAMINER TARAE, CATHERINE MICHELLE	
			ART UNIT 3623	PAPER NUMBER
			MAIL DATE 12/21/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/977,050

Applicant(s)

ELLIS ET AL.

Examiner

C. Michelle Tarae

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 19, 2007 has been entered.

Claims 1, 9, 14-15, 17 and 18 have been amended. Claims 1-18 are now pending in this application.

Response to Amendment

2. Applicant's amendments to claims 1, 9, 14-15, 17 and 18 are acknowledged.

Response to Arguments

3. Applicant's arguments are moot in view of the new grounds of rejections provided below.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. Claims 1-2, 5-18 are rejected under 35 U.S.C. 102(a) as being anticipated by the product, @Risk. The following articles are used to describe the single product, @Risk. Thus, this is a product rejection.

- archived version of www.palisade.com's product description of @Risk features and functions, January 19, 2000 [hereinafter, reference U];
- Cummings, Nigel. "@Risk delivers richer picture," *OR Newsletter*, February 1999 [hereinafter, reference V]; and
- Marsh, Thomas. "Palisade upgrades @Risk Software," *Corporate Finance*, Sept 1998 [hereinafter, reference W].

As per claim 1, @Risk discloses risk management software embodied upon a computer-readable medium, the software comprising a set of instructions for the following steps to be performed when the software is executed:

a) accessing, from a project data store, project data comprising of a plurality of action identifiers, in a nested arrangement, each of which identifies a separate action to be performed (reference U, pages 1 and 4; reference V, page 1; reference W, page 1; @Risk connects with Microsoft Project, thereby accessing project data from Microsoft Project data stores. Project data includes tasks that fall along a critical path, where a critical path represents a series of interrelated, or nested, tasks.);

b) analyzing the project data to identify a plurality of activities, ordered in a nested arrangement, each activity being thereby linked to at least one of the actions, wherein to at least some of the plurality of activities is assigned at least one risk

indicator, the at least one risk indicator identifying consequences of a risk on the activity (reference U, pages 3-5; reference V, page 4; Project data includes tasks that fall along a critical path, where a critical path represents a series of interrelated, or nested, tasks. Probabilistic branching and if/then conditional modeling allow assignment of risk indicators under different scenarios for the project tasks.);

c) on the basis of one or more mitigating tasks identified to reduce or prevent the risk or the consequences of the risk, outputting to the project data in the project data store one or more new action identifiers or alterations to existing action identifiers in the project data, and adjusting the nested arrangement of the action identifiers accordingly (reference U, pages 2, 3 and 5; The simulation feature allows changes to project data in response to the risk assessment indicators, including changes to the tasks in the critical path.); and

d) accessing changes to the project data and revising the plurality of activities in dependence on whether the changes are to action identifiers in the project data resulting from step c) above (reference U, page 3; The changes in the project data may be reported directly in Microsoft Project.).

As per claim 2, @Risk discloses risk management software as claimed in claim 1, wherein the changes to the project data are compared with new action identifiers or alterations to existing action identifiers previously output to the project data and where the changes to project data relate to action identifiers previously output to the project data no revisions are made to the plurality of activities (reference U, pages 1-2 and 4-5;

reference V, page 1; Sensitivity and scenario analyses may be performed to see how various changes impact a project before actually changing the project data.).

As per claim 5, @Risk discloses risk management software as claimed in claim 1, comprising the further step of automatically outputting a message to one or more predetermined recipients (reference U, page 3; reference V, pages 3-4; The risk analysis system creates graphical displays and reports to risk analysis recipients, where the graphics and reports may be construed as messages to a recipient as they detail risk assessment for a project.).

As per claim 6, @Risk discloses risk management software as claimed in claim 5, comprising the further step of automatically outputting the message when the consequences of a risk exceed a selected threshold (reference U, page 5; Output results may include when variables fall outside of designated minimum or maximum values.).

As per claim 7, @Risk discloses risk management software as claimed in claim 5, wherein the message is automatically output when the processor receives notice of an impacted risk (reference U, page 3; reference V, pages 3-4; The risk analysis system creates graphical displays and reports to risk analysis recipients, where the graphics and reports may be construed as messages to a recipient as they detail risk assessment for a project.).

As per claim 8, @Risk discloses risk management software as claimed in claim 1, wherein the risk indicator comprises one or more of a cost allowance and a time

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allowance (reference U, pages 1-3; reference V, page 2; Cost and time are two of the most common risk indicators.).

Claims 9-18 recite subject matter already rejected in claims 1-2 and 5-8 above.

Therefore, claims 9-18 are rejected on the same basis as claims 1-2 and 5-8 above.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over @Risk, as applied above, and Shannon (U.S. 6,088,678).

As per claim 3, @Risk does not expressly disclose receiving a trigger from the project data when the project data has been changed. Shannon discloses risk management software as claimed in claim 1, comprising the step of receiving a trigger from the project data when the project data has been changed (col. 4, lines 5-18; The simulation tool stops at an event that it has identified as not able to be completed and remains stopped until it detects a change to the project that will allow the event to occur.). @Risk and Shannon are analogous in that each is concerned with assessing risk factors associated with a project and conducting simulation analyses to determine how to mitigate the risk factors. At the time of the invention, it would have been obvious

to a person of ordinary skill in the art to modify @Risk to receive a trigger when the project data has been changed in order to keep project managers abreast of project changes in a timely fashion, particularly when the project changes relate to risk factors.

As per claim 4, @Risk does not expressly disclose periodically polling the project data to determine whether changes have been made to the project data. Shannon discloses risk management software as claimed in claim 1, comprising the step of periodically polling the project data to determine whether changes have been made to the project data (col. 4, lines 5-18; When the simulation tool runs, it polls the project data and makes determinations on whether changes have been made to the project data.). @Risk and Shannon are analogous in that each is concerned with assessing risk factors associated with a project and conducting simulation analyses to determine how to mitigate the risk factors. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify @Risk to periodically poll the project data to determine whether changes have been made to the project data in order to keep a timely and accurate log of project change, particularly when the project changes relate to risk factors.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Finley, Eric et al. "Project Scheduling Risk Assessment Using Monte Carlo Methods," *Cost Engineering*, Oct 1994, discusses project risk assessment;

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- Boehm, Barry. "Software Risk Management: Principles and Practices," *Defense Advanced Research Project Agency*, Jan 1991, discusses software project risk assessment;
- Hulett, David. "Schedule Risk Analysis Simplified," *PM Network*, July 1996, discusses schedule risk analysis;
- SCRAM Professional Analysis Services, archived version from www.archive.org, April 2000, discusses project risk analysis tools;
- "Strategic Thought Limited: Strategic Thought launches first web-based risk management solution; Demand for Active Risk Management software increases as organizations seek to reduce corporate risk in multiple large-scale projects across the enterprise," *M2 Presswire*, Sept 13, 2000, discusses a web-based risk management product;
- Royer, Paul. "Risk management: The undiscovered dimension of project management," *Project Management Journal*, Mar 2000, discusses project risk management;
- Dawood, Nashwan. "Estimating project and activity duration: a risk management approach using network analysis," *Division of Civil Engineering and Building, School of Science and Technology, The University of Teesside, Middlesborough TS1 3BA, UK*, Aug 14, 1997, discusses risk management.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Michelle Tarae whose telephone number is 571-272-

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6727. The examiner can normally be reached Monday – Friday from 8:30am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz, can be reached at 571-272-6729.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

C. Michelle Tarae
C. MICHELLE TARAE
PRIMARY EXAMINER
AU 3623

December 19, 2007